

	<a href="#">Link to Final Agency Decision</a>
	OAH 8-6020-19263-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE SAINT PAUL CITY COUNCIL

In the Matter of the Adverse Actions Against the Retail Food – Restricted Food Service, Retail Food C Grocery, and Cigarette – Tobacco Licenses held by Gas It for Less & Food, Inc., d/b/a West 7<sup>th</sup> Market and the Gas Station License Application Submitted by Gas It for Less & Food, Inc., d/b/a West 7<sup>th</sup> Market

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Eric L. Lipman on October 30 and November 9, 2007, at the Office of Administrative Hearings. The hearing record closed following the receipt of testimony and argument on November 9, 2007.

Rachel Tierney, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, MN 55102, appeared on behalf of the Department of Safety and Inspections (DSI). Jordan S. Kushner, Attorney at Law, 431 South Seventh Street, Suite 2446, Minneapolis, MN 55415, appeared on behalf of the Licensee, Gas It For Less and Food, Inc., d/b/a West 7<sup>th</sup> Market (“West 7<sup>th</sup> Market” or Licensee).

**STATEMENT OF ISSUES**

Should the City of St. Paul take adverse action against the licenses currently held by West 7<sup>th</sup> Market, because the Licensee has “engaged in, or permitted, a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity”?

Should the City of St. Paul deny the licensee’s application for a gas station license because the licensee has “engaged in, or permitted, a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity”?

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. The West 7th Market is a gas station located at 675 West 7th Street in St. Paul, Minnesota.<sup>1</sup>

2. Saddam Samaan, on behalf of Gas It For Less and Food, Inc., applied to the City of Saint Paul for the set of licenses that would be needed to continue operations of West 7<sup>th</sup> Market under his management.<sup>2</sup>

3. Mr. Samaan's company, Samaan Fuel, Inc., has leasehold, purchase and security agreements relating to the West 7<sup>th</sup> Market property.<sup>3</sup>

4. Mr. Samaan's acquisition of West 7th Market is part of a larger series of transactions in recent years, through which Mr. Samaan has acquired and operated gas stations in Minnesota.<sup>4</sup>

5. In February of 2004, Mr. Samaan, following a bench trial, was found guilty of 5<sup>th</sup> Degree Criminal Sexual Conduct. While Samaan maintains that the sexual touching underlying the verdict was part of a romantic relationship with the complaining witness, the trial court found Samaan guilty of nonconsensual touching of an adult female customer of an Amoco gas station where Samaan was then working.<sup>5</sup>

### Initial License Application

6. On January 24, 2007, Samaan applied for four separate licenses: (1) a gasoline station license; (2) a retail food – restricted food service license; (3) a retail food – grocery (for facilities 1001 to 3000 sq. ft.) license; and (4) a cigarette and tobacco license.<sup>6</sup>

7. On July 5, 2007, in regular session, the St. Paul City Council denied all four of Samaan's license applications. The Council based its decision upon Samaan's failure to submit all of the documents that were necessary to complete the application process.<sup>7</sup>

8. On July 12, DSI Deputy Director Christine Rozek sent Samaan additional written notification of the denial of the license applications. In her

---

<sup>1</sup> See *generally*, Exs. 1, 6, C and D.

<sup>2</sup> See, Exs. 2, 3 4, 5 and 20.

<sup>3</sup> See, Exs. 2, C and D.

<sup>4</sup> See, Ex. 5 at 6; Testimony of Saddam Samaan.

<sup>5</sup> See, Exs. 21, 25 and 26; Test. of S. Samaan; Testimony of Jay Castonguay.

<sup>6</sup> Exs. 3 at 1 and 5 at 1.

<sup>7</sup> Ex. 4 at 2.

letter, she explained that as a result of the denial, West 7<sup>th</sup> Market was not permitted to engage in sales of gasoline, groceries, malt beverages, or tobacco products.<sup>8</sup>

### **July 13, 2007**

9. At 1:00 p.m. on July 13, 2007, DSI Senior License Inspector Kris Schweinler and St. Paul Police Sergeant David Schoen delivered a Notice of Denial and Order to Close to West 7th Market. Samaan was not present at the West 7<sup>th</sup> Street location at the time the Notice was delivered. Schweinler and Sergeant Schoen watched as the clerk then on duty closed the store and the two waited as the customers were cleared from the area.<sup>9</sup>

10. On the same day, July 13, Samaan reapplied to DSI for each of the four licenses: (1) a gasoline station license; (2) a retail food – restricted food service license; (3) a retail food – grocery (for facilities 1001 to 3000 sq. ft.) license; and (4) a cigarette and tobacco license. Samaan paid the required fees and completed forms that were necessary to reinitiate the license application process.<sup>10</sup>

11. At approximately 3:45 p.m. on July 13, Schweinler returned to the store to discover that the retail store was open to customers and customers purchasing gasoline.<sup>11</sup>

12. At approximately 4:00 p.m. on July 13, Schweinler contacted St. Paul Police Sergeant Daniel Malmgren and advised Malmgren that the West 7th Market was subject to an Order to Close.<sup>12</sup>

13. Sergeant Malmgren instructed St. Paul Police Officer Gary Carter to investigate the premises. Officer Carter went to the store and confirmed that it was open for business, serving retail customers and undertaking sales of gasoline.<sup>13</sup>

14. Sergeant Malmgren joined Officer Carter at West 7th Market and questioned three customers – two of whom had purchased items from the retail store, and one customer who purchased both gasoline as well as store items.<sup>14</sup>

---

<sup>8</sup> Ex. 4 at 1; Testimony of Kristina Schweinler.

<sup>9</sup> Test. of K. Schweinler

<sup>10</sup> Ex. 5-1; Test. of S. Samaan.

<sup>11</sup> Exs. 6 and 22; Test. of K. Schweinler.

<sup>12</sup> Test. of K. Schweinler.

<sup>13</sup> Ex. 7 at 6; Testimony of Daniel Malmgren; Testimony of Gary Carter.

<sup>14</sup> Exs. 7 at 6 and 7.

15. When Sergeant Malmgren and Officer Carter questioned the store clerk, Alexander Tsegay, Tsegay handed the officers a receipt for a subsequent set of license applications – in the apparent belief that remittance of the application fee authorized continued operation.<sup>15</sup>

16. Sergeant Malmgren and Officer Carter watched Tsegay close the store and affix a sign to the doorway of the store advising customers that the store was closed. Sergeant Malmgren advised Tsegay that Mr. Samaan should further discuss the licensing issues with DSI.<sup>16</sup>

### **Further Consultation with Licensing Officials**

17. On July 19, 2007, Samaan returned to the DSI office and spoke with DSI Project Facilitator Reid Soley. During this meeting, Samaan agreed in writing not to sell gasoline at the West 7th Market until: (1) completion of the required thirty-day neighborhood notice period and (2) issuance of a gasoline license by the City of Saint Paul.<sup>17</sup>

18. The gas station license, if promptly issued at the close of the comment period, would have been effective on September 16, 2007.<sup>18</sup>

### **July 31, 2007**

19. On July 31, 2007, DSI Inspector Jeff Fischbach stopped at West 7th Market and noted that several vehicles were at the pumps dispensing gasoline.<sup>19</sup>

### **August 6, 2007**

20. By way of a letter dated August 6, 2007, DSI Deputy Director Rozek sent Samaan a letter at his business address informing him that the neighborhood notice period for his gas station license had begun and that the comment period would close on September 7, 2007. The letter included a bold-lettered statement reading: “Your Gas Station License has not yet been issued.” The letter also included a bold-lettered disclaimer, stating that the letter itself was “not an indication that [the] application [would] be granted.”<sup>20</sup>

---

<sup>15</sup> Ex. 7 at 7; Test. of D. Malmgren.

<sup>16</sup> *Id.*

<sup>17</sup> Ex. 8; Testimony of Reid Soley.

<sup>18</sup> See generally, Ex. 1 at 5; Testimony of Jeff Fischbach.

<sup>19</sup> Ex. 19 at 1; Test. of J. Fischbach.

<sup>20</sup> Ex. 9.

### **August 8, 2007**

21. On August 8, 2007, Sergeant Schoen received information that West 7th Market was still selling gasoline. Sergeant Schoen drove to the market in his personal vehicle, and with his wife, in an attempt to purchase gasoline. The store appeared to be open for business and Schoen did not observe any signage informing customers that gasoline was not for sale.

22. Sergeant Schoen's wife attempted to pre-pay for a purchase of gasoline inside the retail store but was informed by the clerk on duty that the gasoline pump would only operate by using a credit card in the mechanism on the pump. Sergeant Schoen's wife followed this direction and purchased \$15.00 of gasoline, for which she received a receipt.<sup>21</sup>

### **August 9, 2007**

23. Following the report of Sergeant Schoen's gasoline purchase on August 8, St. Paul Police Officer Brian Casey was dispatched to the West 7th Market on August 9, 2007. Officer Casey instructed the store clerk that the establishment was not permitted to sell gasoline. The clerk indicated that he was aware of the prohibition.<sup>22</sup>

24. Later that same day, while in the vicinity, St. Paul Police Sergeants Schoen and Gromek stopped across West 7<sup>th</sup> Street from the West 7th Market. From their position across the street, the duo observed a customer dispensing gasoline into his vehicle.<sup>23</sup>

### **August 21, 2007**

25. On August 21, 2007, Sergeant Schoen again returned to West 7th Market with his wife, traveling in his personal vehicle. He noted that the store was open for business. A sign on the top of gas pumps read: "All gas is pre-pay." A smaller sign affixed to the pump read: "Out of gas."<sup>24</sup>

26. Sergeant Schoen's wife went inside the retail store to inquire if the West 7<sup>th</sup> Market was indeed out of gasoline. The clerk asked Mrs. Schoen how much she needed and accepted \$5.00 in cash for the purchase of \$5.00 worth of gasoline. Following this transaction, Mrs. Schoen was able to dispense \$5.00 worth of gasoline into the couple's vehicle.<sup>25</sup>

---

<sup>21</sup> Exs. 11 at 1 and 2; Test. of D. Schoen.

<sup>22</sup> Ex. 10 at 3; Testimony of Brian Casey.

<sup>23</sup> Ex. 12; Test. of D. Schoen.

<sup>24</sup> See, Exs. B-1, B-2, B-4, B-5.

<sup>25</sup> Exs. 13 at 2 and 3; Test. of D. Schoen.

## **August 31, 2007**

27. Sergeant Schoen received a phone call from Armentia McNeal, who claimed that she had purchased gasoline from West 7th Market that morning.<sup>26</sup>

28. Ms. McNeal told Sergeant Schoen that although there were signs on the pumps reading, "Out of Gas," the store clerk had informed her that cash purchases of gasoline were still possible. Indeed, Ms. McNeal reported to Sergeant Schoen that she did, in fact, purchase \$30 worth of gasoline by paying the store clerk in cash.<sup>27</sup>

## **September 4, 2007**

29. On September 4, 2007, DSI Senior License Inspector Schweinler purchased \$36 worth of gasoline from the West 7th Market. She paid with a credit card and obtained a receipt from the store clerk.<sup>28</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to Minn. Stat. § 340A.415 and St. Paul Legislative Code § 310.05.

2. The City of St. Paul gave proper notice of the hearing and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The City of St. Paul proscribes the maintenance or operation of a gas station within the city limits of Saint Paul without a license.<sup>29</sup>

4. Section 310.06 (b) (6) (c) of the Saint Paul Legislative Code authorizes adverse action against a licensee in cases where the licensee has "engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity."

---

<sup>26</sup> Ex. 14 at 3; Test. of D. Schoen.

<sup>27</sup> *Id.*

<sup>28</sup> Ex. 15 at 3; Test. of K. Schweinler.

<sup>29</sup> St. Paul Leg. Code § 424.01 (a).

5. Similarly, Section 310.06 (b) (6) (b) of the Saint Paul Legislative Code authorizes adverse action against a license applicant where the applicant “has been convicted of a crime that may disqualify said applicant from holding the license in question under the standards and procedures in Minnesota Statutes chapter 364.”

6. Members of the Department of Safety and Inspections (“DSI”) may investigate gas stations within city limits at “various and reasonable times” to ensure compliance with all applicable regulations.<sup>30</sup>

7. As the party proposing that a certain action be taken, the City has the burden of proving facts at issue by a preponderance of the evidence.

8. On at least one occasion, West 7th Market violated the City’s closure order and sold retail items without a valid license.

9. On multiple occasions, despite the City Council’s application denial in July and DSI’s subsequent orders, West 7th Market sold gasoline without a valid license.

10. The City established by a preponderance of the evidence that, through repeated violations, the Licensee engaged in a pattern of conduct demonstrating a failure to comply with applicable law.

11. The City Council could reasonably conclude upon this record that Mr. Samaan’s 2004 conviction for Criminal Sexual Conduct in the 5<sup>th</sup> Degree, for acts which occurred while on duty at a gas station and convenience store in Lakeville, Minnesota, “directly relate to the position of employment sought or the occupation for which the license is sought” as those terms are used in Minnesota Statutes § 364.03 (2).

12. Similarly, the City Council could reasonably conclude from the records detailing Mr. Samaan’s 2005 probation violations,<sup>31</sup> that he did not produce “evidence showing compliance with all terms and conditions of probation” as those terms used in Minnesota Statutes § 364.03 (3) (a) (2).

13. The Memorandum that follows below explains the reasons for these Conclusions. To the extent that the Memorandum includes matters that are more appropriately characterized as Conclusions, the Administrative Law Judge adopts these and incorporates those items by reference.

14. Further, the Administrative Law Judge adopts as Conclusions any Findings of Fact that are more appropriately described as Conclusions.

---

<sup>30</sup> St. Paul Leg. Code § 424.04.

<sup>31</sup> See, Ex. 26.

Based upon the above Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

It is hereby recommended that the St. Paul City Council revoke West 7th Market's Retail Food and Tobacco licenses and deny its current application for a Gas Station license.

Dated: December 6, 2007

s/Eric L. Lipman

ERIC L. LIPMAN

Administrative Law Judge

Reported: Digitally recorded  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation.<sup>32</sup> Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

---

<sup>32</sup> Saint Paul Leg. Code §§ 310.05 (c-1), 310.06.



## MEMORANDUM

As noted above, Section 310.06 (b) (6) (c) justifies adverse action when a licensee has “engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity.”

The hearing record demonstrates that West 7th Market sold retail items (on at least one occasion) and gasoline (on numerous occasions) without the city licenses authorizing such sales.

While Samaan and West 7<sup>th</sup> Market argue that the City’s general practice is to permit license applicants to undertake the trades for which licenses are required while the license applications are pending, such that it is inequitable to require them to wait until the actual licenses are issued before undertaking licensed activities, the proof of this practice falls far short of the proof required of estoppel.<sup>33</sup> There is not evidence in the record to support the claim that any government official led Samaan to believe that gasoline could be sold in advance of the issuance of the required license – and indeed, officials took the unusual step of memorializing contrary instructions and having Saaman acknowledge these with his signature.<sup>34</sup> Estoppel does not lie upon these facts.

Alternatively, Samaan and West 7<sup>th</sup> Market argue that any requirements for licensure are bounded by, and subordinate to, “commercial realities.” Suggesting that it would be commercially unreasonable for West 7<sup>th</sup> Market to suspend retail operations (and gasoline sales) until the required licenses are obtained, the Licensee argues that adverse regulatory action should not lie. Yet, Samaan points to no law for the proposition that the City of Saint Paul may not regulate retail sales if compliance with such regulations is inconvenient or unexpectedly costly for a business owner – and the Administrative Law Judge is not aware of any such restriction on the City’s regulatory powers. To the contrary, the timetable for obtaining retail licenses is precisely the type of commercial risk that business owners are obliged to assume and build into their business plans.<sup>35</sup>

---

<sup>33</sup> See, e.g., *Kmart Corp. v. County of Stearns*, 710 N.W.2d 761, 771 (Minn. 2006) (“A governmental agency may be estopped from taking an enforcement action when the plaintiff demonstrates ‘[1] that the defendant, through his language or conduct, induced the plaintiff [2] to rely, in good faith, on this language or conduct [3] to his injury, detriment or prejudice’”) (citing *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980)); *AAA Striping Services Co. v. Minnesota Dept. of Transp.*, 681 N.W.2d 706, 720 (Minn. App. 2004) (“Affirmative misconduct, rather than simple inadvertence, mistake, or imperfect conduct is required for estoppel to be applied against the government”) (citing *REM-Canby, Inc. v. Minn. Dep’t of Human Servs.*, 494 N.W.2d 71, 74 (Minn. App. 1992)).

<sup>34</sup> Ex. 8; Test. of R. Soley.

<sup>35</sup> Compare generally, *State v. Lindquist*, 214 N.W. 260, 261 (Minn. 1927) (“The arbitrary denial of a proper application for a license or permit may entitle the applicant to a remedy; but he cannot do the prohibited act in defiance of a valid ordinance and then be heard to say in defense that the refusal of the license or permit was arbitrary”); see also, *City of St. Paul v. Superior Dairy Fresh*

Likewise important, the hearing record makes clear that avoiding unauthorized gasoline sales was always within Samaan's powers. He acknowledges that he closely monitored the amounts of gasoline that were dispensed on any given day as well as the supply that remained in the station's underground tanks.<sup>36</sup> Additionally, Samaan was able to withdraw the gasoline from the tanks at West 7<sup>th</sup> Market (so as to avoid further unauthorized sales), and ultimately arranged for this to be done; but avoided doing so for several weeks because the withdrawal involved a \$1 per gallon surcharge. Accordingly, the hearing record makes clear that Samaan knew that: (a) he was not authorized to undertake gasoline sales at West 7<sup>th</sup> Market; (b) such sales were occurring; and (c) unauthorized gasoline sales could have been ended earlier, and compliance with regulation achieved, through payment of a \$1 per gallon surcharge for removal of the gasoline supply.

Adverse action is appropriate in this case because the Licensee engaged in a consistent pattern of misconduct in direct disobedience of the City Council's licensing actions and the directives of DSI.

### **Severity of the Proposed Sanction**

Samaan and West 7<sup>th</sup> Market argue that denial of the pending gas station application and revocation of their other licenses is an unduly harsh result that is at odds with the presumptive sanctions listed in St. Paul Legislative Code Section 310.05 (m). As the Licensee points out, according to the presumptive penalty grid, license revocation is a sanction that would not ordinarily follow until the licensee's fourth appearance before the City Council. The City counters that if the City Council is presented with "substantial and compelling reasons" to do so, the Council may upwardly depart from the presumptive sanction, provided that it details these reasons in writing.

The Administrative Law Judge agrees with the City that an upward departure from the presumptive penalty is both possible and appropriate in this case. West 7th Market's actions through July, August, and early September of 2007 constitute multiple infractions of the licensing regulations – and the existence of these serial infractions support an upward departure from the presumptive penalty grid.<sup>37</sup> Likewise important, while Section 310.05 (m) (v) suggests that license revocation of licenses would ordinarily only follow after a fourth appearance before the Council, on four distinct regulatory violations within

---

*Milk Co.*, 244 N.W.2d 737, 738 (Minn. 1976) (Defendant's possession of a license from the Commissioner of Agriculture for the manufacture and distribution of dairy products did not relieve defendant from complying with municipal licensing requirements for vending machines which defendant maintained within city).

<sup>36</sup> See, Test. of S. Samaan; Testimony of Mariana Karanya.

<sup>37</sup> St. Paul Leg. Code § 310.05 (m) (ii).

a 24 month period,<sup>38</sup> the Licensee has committed eight violations of the regulations within a short two month period. The number of direct and extraordinary interventions by City officials (including two forced closures by police officers on the same day), and the serial failure of the Licensee to maintain compliance following these interventions, makes clear that this is not the ordinary case. Revocation of West 7th Market's current licenses, and denial of its pending gas station license, is solidly grounded upon this record.

**E.L.L.**

---

<sup>38</sup> St. Paul Leg. Code § 310.05 (m) (v).